

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2021

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HOUSE BILL 640

Short Title: Interbasin Transfer Clarifying Amends. (Public)

Sponsors: Representatives Yarborough, Brody, and Arp (Primary Sponsors).
For a complete list of sponsors, refer to the North Carolina General Assembly web site.

Referred to: Environment, if favorable, Judiciary 4, if favorable, Rules, Calendar, and Operations of the House

April 26, 2021

A BILL TO BE ENTITLED

AN ACT TO MAKE VARIOUS CHANGES TO THE INTERBASIN TRANSFER STATUTES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143-215.22L reads as rewritten:

"§ 143-215.22L. Regulation of surface water transfers.

(a) Certificate Required. – No person, without first obtaining a certificate from the Commission, may:

(1) Initiate a transfer of 2,000,000 gallons of water or more per day, calculated as a daily average of a calendar month and not to exceed 3,000,000 gallons per day in any one day, from one river basin to another.

(2) Increase the amount of an existing transfer of water from one river basin to another by twenty-five percent (25%) or more above the average daily amount transferred during the year ending 1 July 1993 if the total transfer including the increase is 2,000,000 gallons or more per day.

(3) Increase an existing transfer of water from one river basin to another above the amount approved by the Commission in a certificate issued under G.S. 162A-7 prior to 1 July 1993.

(b) Exception. – Notwithstanding the provisions of subsection (a) of this section, a certificate shall not be required to transfer water from one river basin to another up to the full capacity of a facility to transfer water from one basin to another if the facility was in existence or under construction on 1 July 1993.

(b1) Impact of Regional Water Supply Agreement. – Public water systems within the same receiving river basin that are part of an interlocal agreement or other regional water supply arrangement shall not add together the individual transfer amounts for each system for the purpose of determining whether a certificate is required from the Commission under subsection (a) of this section.

(c) Notice of Intent to File a Petition. – An applicant shall prepare a notice of intent to file a petition that includes a nontechnical description of the applicant's request and an identification of the proposed water source. Within 90 days after the applicant files a notice of intent to file a petition, the applicant shall hold at least one public meeting in the source river basin upstream from the proposed point of withdrawal, at least one public meeting in the source river basin downstream from the proposed point of withdrawal, and at least one public meeting in the receiving river basin to provide information to interested parties and the public regarding the nature and extent of the proposed transfer and to receive comment on the scope of the



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1 environmental documents. Written notice of the public meetings shall be provided at least 30
2 days before the public meetings. At the time the applicant gives notice of the public meetings,
3 the applicant shall request comment on the alternatives and issues that should be addressed in the
4 environmental documents required by this section. The applicant shall accept written comment
5 on the scope of the environmental documents for a minimum of 30 days following the last public
6 meeting. Notice of the public meetings and opportunity to comment on the scope of the
7 environmental documents shall be provided as follows:

8 (1) By publishing notice in the North Carolina Register.

9 (2) By publishing notice in a newspaper of general circulation in:

10 a. Each county in this State located in whole or in part of the area of the
11 source river basin upstream from the proposed point of withdrawal.

12 b. Each city or county located in a state located in whole or in part of the
13 surface drainage basin area of the source river basin that also falls
14 within, in whole or in part, the area denoted by one of the following
15 eight-digit cataloging units as organized by the United States
16 Geological Survey:

17 03050105 (Broad River: NC and SC);

18 03050106 (Broad River: SC);

19 03050107 (Broad River: SC);

20 03050108 (Broad River: SC);

21 05050001 (New River: NC and VA);

22 05050002 (New River: VA and WV);

23 03050101 (Catawba River: NC and SC);

24 03050103 (Catawba River: NC and SC);

25 03050104 (Catawba River: SC);

26 03010203 (Chowan River: NC and VA);

27 03010204 (Chowan River: NC and VA);

28 06010105 (French Broad River: NC and TN);

29 06010106 (French Broad River: NC and TN);

30 06010107 (French Broad River: TN);

31 06010108 (French Broad River: NC and TN);

32 06020001 (Hiwassee River: AL, GA, TN);

33 06020002 (Hiwassee River: GA, NC, TN);

34 06010201 (Little Tennessee River: TN);

35 06010202 (Little Tennessee River: TN, GA, and NC);

36 06010204 (Little Tennessee River: NC and TN);

37 03060101 (Savannah River: NC and SC);

38 03060102 (Savannah River: GA, NC, and SC);

39 03060103 (Savannah River: GA and SC);

40 03060104 (Savannah River: GA);

41 03060105 (Savannah River: GA);

42 03040203 (Lumber River: NC and SC);

43 03040204 (Lumber River: NC and SC);

44 03040206 (Lumber River: NC and SC);

45 03040207 (Lumber River: NC and SC);

46 03010205 (Albemarle Sound: NC and VA);

47 06020003 (Ocoee River: GA, NC, and TN);

48 03010101 (Roanoke River: VA);

49 03010102 (Roanoke River: NC and VA);

50 03010103 (Roanoke River: NC and VA);

51 03010104 (Roanoke River: NC and VA);

- 1 03010105 (Roanoke River: VA);
2 03010106 (Roanoke River: NC and VA);
3 06010102 (Watauga River: TN and VA);
4 06010103 (Watauga River: NC and TN);
5 03040101 (Yadkin River: VA and NC);
6 03040104 (Yadkin River: NC and SC);
7 03040105 (Yadkin River: NC and SC);
8 03040201 (Yadkin River: NC and SC);
9 03040202 (Yadkin River: NC and SC).
- 10 c. Each county in this State located in whole or in part of the area of the
11 source river basin downstream from the proposed point of withdrawal.
12 d. Any area in the State in a river basin for which the source river basin
13 has been identified as a future source of water in a local water supply
14 plan prepared pursuant to G.S. 143-355(l).
15 e. Each county in the State located in whole or in part of the receiving
16 river basin.
17 f. The Department shall create, maintain, and annually update a list of
18 newspapers of general circulation for each county in the State. The
19 Department shall designate at least one newspaper for each county and
20 shall make the list available on its website. Publication of notice in the
21 newspaper designated by the Department for a particular county shall
22 be deemed compliant with the notice requirement of this subdivision
23 with respect to (i) an applicant's publication of the notice of intent to
24 file a petition, for each county in which notice must be published, (ii)
25 the Commission's publication of notice of the public hearing on the
26 draft environmental document, notice of its draft determination on the
27 applicant's environmental document, or notice of public hearing on the
28 Commission's draft determination, for the county or counties in which
29 these notices must be published, and (iii) any requirement that
30 publication also be made in a newspaper of general circulation in any
31 city within that county. The Department's designation of a newspaper
32 pursuant to this subsection is not an agency decision subject to
33 review in a contested case under Article 3 of Chapter 150B of the
34 General Statutes, nor is the designation of a newspaper subject to
35 review in any contested case challenging the Commission's grant of a
36 certificate pursuant to this section.
- 37 (3) By giving notice by first-class mail or electronic mail to each of the following:
38 a. The board of commissioners of each county in this State or the
39 governing body of any county or city that is politically independent of
40 a county in any state that is located entirely or partially within the
41 source river basin of the proposed transfer and that also falls within, in
42 whole or in part, the area denoted by one of the eight-digit cataloging
43 units listed in sub-subdivision b. of subdivision (2) of this subsection.
44 b. The board of commissioners of each county in this State or the
45 governing body of any county or city that is politically independent of
46 a county in any state that is located entirely or partially within the
47 receiving river basin of the proposed transfer and that also falls within,
48 in whole or in part, the area denoted by one of the eight-digit
49 cataloging units listed in sub-subdivision b. of subdivision (2) of this
50 subsection.

- 1 c. The governing body of any public water system that withdraws water
2 upstream or downstream from the withdrawal point of the proposed
3 transfer.
- 4 d. If any portion of the source or receiving river basins is located in
5 another state, all state water management or use agencies,
6 environmental protection agencies, and the office of the governor in
7 that state upstream or downstream from the withdrawal point of the
8 proposed transfer.
- 9 e. All persons who have registered a water withdrawal or transfer from
10 the proposed source river basin under this Part or under similar law in
11 an another state.
- 12 f. All persons who hold a certificate for a transfer of water from the
13 proposed source river basin under this Part or under similar law in an
14 another state.
- 15 g. All persons who hold a National Pollutant Discharge Elimination
16 System (NPDES) wastewater discharge permit for a discharge of
17 100,000 gallons per day or more upstream or downstream from the
18 proposed point of withdrawal.
- 19 h. To any other person who submits to the applicant a written request to
20 receive all notices relating to the petition.

21 ...

22 (e) Public Hearing on the Draft Environmental Document. – The Commission shall hold
23 a public hearing on the draft environmental document for a proposed interbasin transfer after
24 giving at least 30 days' written notice of the hearing in the Environmental Bulletin and as
25 provided in subdivisions (2) and (3) of subsection (c) of this section. The notice shall indicate (i)
26 where a copy of the environmental document can be ~~reviewed and~~ reviewed, (ii) the procedure
27 to be followed by anyone wishing to submit written comments and questions on the
28 environmental ~~document.~~ document, and (iii) that administrative review of the environmental
29 document will be limited to issues raised in submitted written comments. The Commission shall
30 prepare a record of all comments and written responses to questions posed in writing. The record
31 shall include complete copies of scientific or technical comments related to the potential impact
32 of the interbasin transfer. The Commission shall accept written comment on the draft
33 environmental document for a minimum of 30 days following the last public hearing. The
34 applicant who petitions the Commission for a certificate under this section shall pay the costs
35 associated with the notice and public hearing on the draft environmental document.

36 (f) Determination of Adequacy of Environmental Document. – The Commission shall
37 not act on any petition for an interbasin transfer until the Commission has determined that the
38 environmental document is complete and adequate. A decision on the completeness and
39 adequacy of the environmental document is only subject to review in a contested case on the
40 decision of the Commission to issue or deny a certificate under this ~~section~~ section when the
41 petition for contested case is filed by a person who previously submitted written comments
42 pursuant to subsection (e) of this section objecting to the completeness or adequacy of the
43 environmental document and setting out the reason or reasons the environmental document is
44 incomplete or is inadequate, and any administrative hearing on the contested case shall consider only
45 the objections set out in the petitioner's previously submitted written comments.

46 ...

47 (h) Settlement Discussions. – ~~Upon the request of~~ During the comment period on the
48 draft environmental document and before the determination of its adequacy, the applicant, any
49 interested party, party who has timely submitted written comments regarding the petition, or the
50 Department, Department may request, or upon its own ~~motion,~~ motion the Commission may
51 appoint appoint, a mediation officer. The mediation officer may be a member of the Commission,

1 an employee of the Department, or a neutral third party but shall not be a hearing officer under
2 subsections (e) or (j) of this section. The mediation officer shall make a reasonable effort to
3 initiate settlement discussions between the applicant and all other interested parties. Evidence of
4 statements made and conduct that occurs in a settlement discussion conducted under this
5 subsection, whether attributable to a party, a mediation officer, or other person shall not be
6 subject to discovery and shall be inadmissible in any subsequent proceeding on the petition for a
7 certificate. The Commission may adopt rules to govern the conduct of the mediation process.

8 ...

9 (j) Public Hearing on the Draft Determination. – Within 60 days of the issuance of the
10 draft determination as provided in subsection (i) of this section, the Commission shall hold public
11 hearings on the draft determination. At least one hearing shall be held in the affected area of the
12 source river basin, and at least one hearing shall be held in the affected area of the receiving river
13 basin. In determining whether more than one public hearing should be held within either the
14 source or receiving river basins, the Commission shall consider the differing or conflicting
15 interests that may exist within the river basins, including the interests of both upstream and
16 downstream parties potentially affected by the proposed transfer. The public hearings shall be
17 conducted by one or more hearing officers appointed by the Chair of the Commission. The
18 hearing officers may be members of the Commission or employees of the Department. The
19 Commission shall give at least 30 days' written notice of the public hearing as provided in
20 subsection (c) of this ~~section~~ section, and the notice shall include a statement that administrative
21 review of the completeness, adequacy of notice, and alternatives analysis of the draft
22 determination will be limited to issues raised in submitted written comments. The Commission
23 shall accept written comment on the draft determination for a minimum of 30 days following the
24 last public hearing. The Commission shall prepare a record of all comments and written responses
25 to questions posed in writing. The record shall include complete copies of scientific or technical
26 comments related to the potential impact of the interbasin transfer. The applicant who petitions
27 the Commission for a certificate under this section shall pay the costs associated with the notice
28 and public hearing on the draft determination.

29 (k) Final Determination: Factors to be Considered. – In determining whether a certificate
30 may be issued for the transfer, the Commission shall specifically consider each of the following
31 items and state in writing its findings of fact and conclusions of law with regard to each item:

32 ...

33 (8) Whether the service area of the applicant is located in both the source river
34 basin and the receiving river basin.

35 (8a) Whether the applicant's petition for a certificate is materially and substantially
36 complete and in accordance with the requirements of this section.

37 (8b) Whether the applicant materially and substantially complied with all
38 requirements for notice to be given by the applicant pursuant to this section.

39 (9) Any other facts and circumstances that are reasonably necessary to carry out
40 the purposes of this Part. The Commission's determinations in subdivisions
41 (8a) and (8b) of this subsection shall be subject to review in a contested case
42 challenging the decision of the Commission to issue or deny a certificate under
43 this section initiated by a person who previously submitted written comments
44 pursuant to subsection (j) of this section objecting to the Commission's draft
45 findings and conclusions of law required by subdivisions (8a) and (8b) of this
46 subsection and setting out the basis for each objection, and any administrative
47 hearing on the contested case shall consider only the objections set out in the
48 petitioner's previously submitted written comments.

49 (l) Final Determination: Information to be Considered. – In determining whether a
50 certificate may be issued for the transfer, the Commission shall consider all of the following
51 sources of information:

- 1 (1) The petition.
- 2 (2) The environmental document prepared pursuant to subsection (d) of this
3 section.
- 4 (3) All oral and written comment and all accompanying materials or evidence
5 submitted pursuant to subsections (e) and (j) of this section.
- 6 (4) Information developed by or available to the Department on the water quality
7 of the source river basin and the receiving river basin, including waters that
8 are identified as impaired pursuant to section 303(d) of the federal Clean
9 Water Act (33 U.S.C. § 1313(d)), that are subject to a total maximum daily
10 load (TMDL) limit under subsections (d) and (e) of section 303 of the federal
11 Clean Water Act, or that would have their assimilative capacity impaired if
12 the certificate is issued.
- 13 (5) Any other information that the Commission determines to be relevant and
14 useful.
- 15 (m) Final Determination: Burden and Standard of Proof; Specific Findings. – The
16 Commission shall grant a certificate for a water transfer if the Commission finds that the
17 applicant has established by a preponderance of the evidence all of the following:
- 18 (1) The benefits of the proposed transfer outweigh the detriments of the proposed
19 transfer. In making this determination, the Commission shall be guided by the
20 approved environmental document and the policy set out in subsection (t) of
21 this section.
- 22 (2) The detriments have been or will be mitigated to the maximum degree
23 practicable.
- 24 (3) The amount of the transfer does not exceed the amount of the projected
25 shortfall under the applicant's water supply plan after first taking into account
26 all other sources of water that are available to the applicant.
- 27 (4) There are no reasonable alternatives to the proposed transfer. The
28 Commission's findings under this subdivision are reviewable in a contested
29 case under Article 3 of Chapter 150B of the General Statutes challenging the
30 decision of the Commission to issue or deny a certificate under this section
31 when the petition for a contested case is filed by a person who previously
32 submitted written comments pursuant to subsection (j) of this section
33 objecting to the Commission's draft findings and conclusions of law required
34 by subdivision (k)(5) of this section and setting forth the basis for each
35 objection, and any administrative hearing on the contested case shall consider only
36 the objections set out in the petitioner's previously submitted written comments.
37 Nothing in this subdivision is intended to limit a contested case challenging
38 findings or conclusions of law regarding alternatives in the final determination
39 that were altered or supplemented as a result of comments received on the
40 draft determination.
- 41 ...
- 42 (o) Administrative and Judicial Review. – ~~Administrative~~ Except as otherwise limited in
43 this section, administrative and judicial review of a final decision on a petition for a certificate
44 under this section shall be governed by Chapter 150B of the General Statutes.
- 45 ...
- 46 (q) Emergency Transfers. – In the case of water supply problems caused by drought, a
47 pollution incident, temporary failure of a water plant, or any other temporary condition in which
48 the public health, safety, or welfare requires a transfer of water, the Secretary of Environmental
49 Quality may grant approval for a temporary transfer. Prior to approving a temporary transfer, the
50 Secretary shall consult with those parties listed in subdivision (3) of subsection (c) of this section
51 that are likely to be affected by the proposed transfer. However, the Secretary shall not be

1 required to satisfy the public notice requirements of this section or make written findings of fact
2 and conclusions of law in approving a temporary transfer under this subsection. If the Secretary
3 approves a temporary transfer under this subsection, the Secretary shall specify conditions to
4 protect other water users. A temporary transfer shall not exceed six months in duration, but the
5 approval may be renewed for a period of six months by the Secretary based on demonstrated
6 need as set forth in this subsection.

7 (q1) Time-Sensitive Emergency. – When the Secretary of Environmental Quality finds (i)
8 that an acute emergency event such as a major equipment failure or system damage caused by a
9 natural disaster has caused a water supply problem and (ii) that there is not adequate time to
10 comply with the provisions of subsection (q) of this section, the Secretary may grant approval
11 for a temporary transfer not to exceed twenty-five percent (25%) of any transfer limits of an
12 existing certificate, or, if there is no certificate, not to exceed twenty-five percent (25%) of any
13 transfer limits determined in accordance with subsection (a) of this section. Any such temporary
14 transfer shall not initially exceed two weeks in duration, and the Secretary may extend such
15 transfer for additional periods of two weeks, upon written request and for good cause shown,
16 provided that the temporary transfer shall not be permitted for greater than 60 days in total based
17 on the same facts and circumstances. The Secretary's grant of such approval shall be in writing,
18 and the Secretary shall not be required to make written findings of fact or conclusions of law in
19 approving a temporary transfer under this subsection. If the Secretary approves a temporary
20 transfer pursuant to this subsection, the Secretary may specify any conditions required to protect
21 other water users. For purposes of this subsection, a drought shall not be considered an acute
22 emergency event.

23"

24 **SECTION 2.** This act is effective when it becomes law.